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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 693 OF 2006

Shri Dattu Tulshiram Hirawe ... Appellant

V/s

Smt. Hirabai Krushna Badate & ors. ... Respondents

Mr. N.V. Gangal for the appellant.

Mr. R.A. Thorat for the respondent No.1.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 27TH JULY, 2007.

P.C.:

1. The appeal has been filed by the defendant No.1 to the suit. The plaintiff had filed a suit against the defendant No.1 claiming an injuunction restraining him from encroaching upon her suit property. The plaintiff claims to be a tenant of defendant Nos. 2 to 7. Defendants 2 to 7 did not contest the status of the plaintiff as their tenant.

2. The suit was partly decreed while the counter claim filed by the defendant No.1 was dismissed. The appeal Court has confirmed the findings of the trial Court.

3. The main contention raised on behalf of the appellant is that the Civil Court had no jurisdiction to entertain the suit for injunction as only the Tenancy Court had the jurisdiction to decide the claims of tenants. This issue, according to the learned advocate, is pending before the Tenancy Court, therefore, the Civil Court ought to have either dismissed the suit or returned the plaint for filing it before the appropriate forum.

4. This submission cannot be accepted. In the case of **Marybai Marshal Pimenta & anr. v/s Ramnath Gopal Bhuskute & ors., reported in 1987 Mh.L.J. 628,** the Division Bench of this Court has held that the Civil Court has jurisdiction to grant an injunction to protect possession of the alleged tenant even though there is no jurisdiction to decide the issue of tenancy. No substantial questions of law arise in the appeal.

5. Appeal dismissed.

6. In view of dismissal of the second appeal, Civil Applicatn No. 2323 of 2005 is also dismissed.

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